

Cooperative Agreement

Year 2003 Montana Department of Environmental
Quality and U.S. Environmental Protection Agency
Partnership for the Development of Total Maximum
Daily Loads (TMDLs) in Montana

June 17, 2003

COOPERATIVE AGREEMENT

Year 2003 Montana Department of Environmental Quality and U.S. Environmental Protection Agency Partnership for the Development of Total Maximum Daily Loads (TMDLs) in Montana

This Cooperative Agreement, hereinafter known as "Agreement", defines the roles and relationships between the State of Montana, Department of Environmental Quality (DEQ) and Region 8 of the U.S. Environmental Protection Agency (EPA), hereinafter, collectively referred to as the "Cooperating Agencies".

This Cooperative Agreement has been established for 2003 and will be reevaluated on an annual basis.

1.0 Background and Purpose

The Clean Water Act requires states to identify water quality limited segments still requiring total maximum daily loads (TMDLs) and then to develop TMDLs for those waters (33 U.S.C. Section 1313 (d) and 40 C.F.R. 130.7(b)). Montana law (Montana Code Annotated Title 75, Chapter 5, Part 7) calls for TMDLs to be completed for waters identified (and sustained) on the 1996 list of impaired waters no later than May 5, 2007. A ruling from the Federal District Court orders EPA to develop TMDLs for the State by May 2007, for waters on the 1996 Montana list. (See *Friends of the Wild Swan v. EPA*, CV97-35-M-DWM)

As a means to ensure timely development of TMDLs consistent with the District Court's order, the DEQ and EPA have agreed to form a partnership for establishment of Total Maximum Daily Loads (TMDLs) in Montana. The purpose of this Agreement is to define the respective roles of the Cooperating Agencies with respect to the establishment of TMDLs.

2.0 TMDL Workload Allocation

Attachment 1 to this Agreement provides a proposed schedule for TMDL development in 2003 through 2005. This schedule reflects changes to the schedule previously presented in the Final 2002 Montana 303(d) List. Both DEQ and EPA agree to work cooperatively in seeking the proposed changes in the schedule, using proper administrative procedures.

Attachments 2 and 3 indicate which Cooperating Agency will take the lead within the specified planning areas. These attachments also specify the TMDL products to be produced. The proposed TMDL workload allocation covers the years 2003 - 2005, but will be re-visited on an annual basis.

It should be understood that EPA has the ultimate responsibility under the court order to assure necessary TMDLs are developed by May 2007 for waters on Montana's 1996 list. It is believed that the partnership, as provided for in the agreement, will assure the necessary TMDLs are done consistent with the court order.

3.0 Annual TMDL Workload Evaluations

Cooperating Agency TMDL establishment responsibilities under this Agreement will be reevaluated on an annual basis. To facilitate this, DEQ agrees to conduct an annual TMDL workload evaluation in conjunction with EPA. The workload evaluation is to begin in January and must be completed by March 1, 2004. The annual evaluation will involve examination of all TMDL Planning Areas (TPAs) and/or individual water body TMDLs scheduled for completion in the subsequent three (3) years. DEQ will develop a conceptual work-plan and schedule for establishment of TMDLs within each TPA or for each water body included in the evaluation. Need for additional DEQ resources will be identified and a plan for obtaining back-up support from EPA, if necessary, will be defined on an annual basis.

4.0 TMDL Status Meetings

To ensure an open exchange of information and facilitate a true partnership in establishing TMDLs in the State of Montana, DEQ and EPA agree to have monthly TMDL status meetings. EPA will prepare and distribute status reports subsequent to each of the monthly meetings.

5.0 TMDL Establishment Guidelines

5.1 High Quality, Science Based Documents

The Cooperating Agencies will strive to produce high quality TMDL documents based on the best available science. To the extent possible in light of the rigorous schedule for establishment of TMDLs, the Cooperating Agencies will also strive to provide consistent direction to, and work with, watershed stakeholders.

5.2 DEQ Procedures

Procedures for establishment of TMDLs by DEQ will be guided by the water assessment portion of the Montana Water Quality Act (Montana Code Annotated Title 75, Chapter 5, Part 7), Section 303(d) of the Clean Water Act, and EPA's implementing regulations for TMDL establishment.

5.3 EPA Procedures

EPA will follow Section 303(d) of the Clean Water Act and EPA's implementing regulations for TMDL establishment.

5.4 Cooperating Agency Representatives

DEQ's Water Quality Monitoring and Watershed Planning Program Managers will function as the point of contact for the public on behalf of the state, as necessary and appropriate, and coordinate activities between EPA and DEQ.

In addition to the specified EPA responsibilities in Attachment 3, the EPA Montana Office will provide technical assistance and coordination on all TMDL development projects.

5.5 Consistency with the 303(d) List

DEQ and EPA will work together to ensure that water quality impairment decisions made during the TMDL establishment process are coordinated with the DEQ staff responsible for making sufficient credible data/beneficial use determinations (SCDBUD) and developing the 303(4) list.

5.6 Schedule Coordination

DEQ and EPA will develop, and share, schedules providing tentative TMDL document deadlines to facilitate coordination and review of the other's documents.

5.7 DEQ Water Quality Data and Library Information

The process for requesting and/or delivering water quality data to DEQ is presented in Attachment 4.

5.8 TMDL Approvals

In accordance with Section 303(d)(2) of the Clean Water Act, EPA will review and approve or disapprove all TMDLs established by DEQ, and where it disapproves a State TMDL, EPA will establish the TMDL in cooperation with DEQ.

In addition to the formal TMDL review conducted by EPA on all final TMDLs submitted to EPA by the State, the State will provide EPA with an opportunity to review draft TMDL documents at least two weeks: 1) prior to the formal public comment period, and 2) prior to formal submittal to EPA.

For TMDL documents prepared by EPA, EPA will provide the State opportunity to review draft TMDL documents at least two weeks: 1) prior to the formal public comment period, and 2) prior to completing the final TMDL document.

6.0 DEQ Specific Responsibilities

6.1 Preliminary Assessment Reports

Preliminary Assessment Reports (PARs) are prepared at the TPA scale for the purpose of:

- Clarifying water quality impairment status between the 1996 and current approved 303(d) lists;
- providing a comparison of probable causes/sources of impairment between the 1996 and current approved 303(d) lists;
- providing a list of references related to the TPA known to DEQ; providing an overview of DEQ's current understanding of water quality impairments in the TPA;
- identifying monitoring data gaps, and;
- identifying/acknowledging known ongoing water quality restoration planning efforts.

PARs have become a critical first step in the TMDL development process in Montana. DEQ will be responsible for the preparation of PARs for all TPAs and water bodies identified in Attachment 1, even where EPA is the responsible party for the TMDL. Future schedules for PAR development will be specified through the annual implementation of 3.0 above.

6.2 Reassessment of Waters Removed from the 1996 List

The court order requires that a TMDL be done for each waterbody/pollutant combination on Montana's 1996 303(d) list, unless that waterbody meets applicable water quality standards. Waters that have been removed from the 1996 list because of lack of sufficient, credible data (such as those removed in the year 2000 listing process) are still subject to the court order. As such, DEQ will reassess those waters to determine their impairment status consistent with the State's TMDL development schedule.

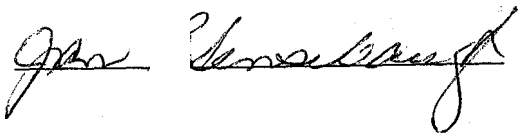
In general, EPA will not directly participate in the State's reassessment process. However, EPA will coordinate with DEQ regarding water quality impairment determinations made within the context of establishing TMDLs to ensure consistency between final TMDL documents and the States 303(d) list.

U.S. Environmental Protection Agency

A handwritten signature in dark ink, appearing to read "Mary H. Doherty", written over a horizontal line.

Date: 6/24/03

Montana Department of Environmental Quality

A handwritten signature in dark ink, starting with "Jan." followed by a name that is partially illegible, written over a horizontal line.

Date: 6/17/03

ATTACHMENT 1
TMDL's Scheduled for Completion in 2003, 2004, 2005
and Proposed Schedule Modifications

Schedule		TPA	Schedule		TPA
As per 9/23/2002(1)	Revised to (2):		As 9/23/2002 ¹	Revised to: ²	
2003		Tongue	2005		Missouri/Chouteau
2003		Powder	2005		Bighorn - Shoshone
2003		Rosebud	2005		Lower Missouri
2003	2004	Lake Helena	2005		Rock
2003	2004	Cut Bank - Two Medicine	2005		Middle Madison
2003		Flathead Headwaters	2005		Upper Gallatin
2003		Dearborn	2005		Upper Red Rock
2003	2004	Upper Madison	2005		Upper Smith
2003		Missouri Mainstem	2005		Lower Smith
2003	2004	Benton Lake	2005		Tobacco (include Therriault)
2003	2004	St. Regis	2005		Flathead Stillwater
2003		Bitterroot Headwaters	2005	2006	Bitterroot
2003	2004	Ruby	2005	2006	Nevada Creek
2003		Bullwhacker Dog	2005	2006	Upper Jefferson
2003		Big Spring	2005	2006	Lower Jefferson
2003		Bobtail Creek	2005		Paradise
2004		Yaak	2005		Shields
2004	2005	Fort Peck Reservoir	2005		Judith Arrow
2004		Little Missouri	2005		Rock Creek - Red Lodge
2004		Grave/Therriault(3)	2005	2007	Lower Milk - Rock
2004		O'Fallon	2005		Redwater
2004		Prospect Creek	2006	2005	Middle Bighole
2004		Ninemile	2006	2005	Lower Bighole
2004		NF Bighole			
2004		Upper Bighole			
2004		Boulder/Big Timber			
2004		Big & Little Dry			
<u>2004</u>	<u>2005</u>	<u>Middle Blackfoot</u>			

- (1) The dates in this column are based on DEQ's TMDL program priorities as presented in the Final 2002 Montana 303(d) List.
- (2) The dates in this column are schedule modifications proposed by DEQ.
- (3) Therriault Creek will be removed from this TPA and placed in the Tobacco TPA, which is currently scheduled for completion in 2005.

ATTACHMENT 2
DEQ TMDL Establishment Responsibilities
And Proposed Schedule Modifications for 2003, 2004, 2005

Schedule		TPA	Product
As per 9/23/2002(1)	Revised to (2)		
2003	2004	St. Regis	Completed TMDL Document
2003	2004	Bitterroot Headwaters	Completed TMDL Document
2003	2004	Ruby	Completed TMDL Document
2003		Bullwhacker Dog	Completed TMDL Document
2003		Big Spring	Completed TMDL Document
2003		Bobtail Creek	Completed TMDL Document
2004		Grave/Therriault (3)	Completed TMDL Document
2004		O'Fallon	Completed Reassessment
2004		Prospect Creek	Completed TMDL Document
2004		Ninemile	Completed TMDL Document
2004		NF Bighole	Completed TMDL Document
2004		Upper Bighole	Completed TMDL Document
2004		Boulder/Big Timber	Completed TMDL Document
2004		Flatwillow/Box Elder	Completed TMDL Document
2004		Big & Little Dry	Completed TMDL Document
2004	2005	Middle Blackfoot	Completed TMDL Document
2005		Tobacco (include Therriault)	Completed TMDL Document
2005		Flathead Stillwater (4)	Completed TMDL Document
2005	2006	Bitterroot	Completed TMDL Document
2005	2006	Nevada Creek	Completed TMDL Document
2005	2006	Upper Jefferson	Completed TMDL Document
2005	2006	Lower Jefferson	Completed TMDL Document
2005		Paradise	Completed TMDL Document
2005		Shields	Completed TMDL Document
2005		Judith Arrow	Completed TMDL Document
2005		Rock Creek - Red Lodge	Completed TMDL Document
2005	2007	Lower Milk - Rock	Completed TMDL Document
2005		Redwater	Completed TMDL Document
2006	2005	Middle Bighole	Completed TMDL Document
2006	2005	Lower Bighole	Completed TMDL Document

- (1) The dates in this column are based on DEQ's TMDL program priorities as presented in the Final 2002 Montana 303(d) List.
- (2) The dates in this column are schedule modifications proposed by DEQ.
- (3) Therriault Creek will be removed from this TPA and placed in the Tobacco TPA, which is currently scheduled for completion in 2005.
- (4) The Flathead Stillwater TPA TMDL effort will be co-managed by EPA and DEQ.

ATTACHMENT 3
EPA TMDL Establishment Responsibilities
and Proposed Schedule Modifications for 2003, 2004, 2005

Schedule		TPA	Product
As per 9/23/2002 1	Revised to: 2		
2003		Tongue	Completed TMDL Document
2003		Powder	Completed TMDL Document
2003		Rosebud	Completed TMDL Document
2003	2004	Lake Helena	Completed TMDL Document
2003	2004	Cut Bank - Two	Completed TMDL Document
2003		Flathead Headwaters	Completed TMDL Document
2003		Dearborn	Completed TMDL Document
2003	2004	Upper Madison	Completed TMDL Document
2003		Missouri Mainstem	Phase I TMDL Study
2003	2004	Benton Lake	Phase I TMDL Study
2004		Yaak	Completed TMDL Document
2004	2005	Fort Peck Reservoir	Completed TMDL Document
2004		Little Missouri	Phase I TMDL Study
2005		Missouri/Chouteau	Completed TMDL Document
2005		Bighorn - Shoshone	Phase I TMDL Study
2005		Lower Missouri	Phase I TMDL Study
2005		Rock	Phase I TMDL Study
2005		Middle Madison	Phase I TMDL Study
2005		Upper Gallatin	Phase I TMDL Study
2005		Upper Red Rock	Phase I TMDL Study
2005		Upper Smith	Phase I TMDL Study
2005		Lower Smith	Phase I TMDL Study

(1) The dates in this column are based on DEQ's TMDL program priorities as presented in the Final 2002 Montana 303(d) List.

(2) The dates in this column are schedule modifications proposed by DEQ.

ATTACHMENT 4

DEQ Water Quality Data and Library Information

1) Definitions

Data that fall within the DEQ "Norm"

- Any project with sample stations that are already established - Please first contact Jill Dill
- Assessment work conducted by DEQ monitoring staff or directed by DEQ staff - Please first contact Jill Dill

Data that fall outside of the DEQ "Norm"

- All other projects - Please first contact Dawn Anderson

2) Summary

- For projects that fall within DEQ "norm", a *timeline* of your needs for field equipment and supplies is critical. 2 weeks in advance of your deadline. In addition to providing the aforementioned items, Jill Dill will also be responsible for providing field forms, sample bottle labels, and site visit code ID stickers to monitors for these projects.
- **ALL completed field forms (within or outside of DEQ "norm")** are to be handed over to **Jill Dill**.
- For projects within the DEQ "norm", Jill Dill will deliver all samples (to the bio-contractors and to the state lab)-. Please let her know your sampling schedule.
- Both preliminary and final data for all projects will be delivered directly to **Jill Dill**. Jill will inform **those involved of the arrival of the new report/data** and place the report/data in a folder on a shared drive or on a CD after QA/QC.
- **Jill Dill** will be the point of contact for **data/report requests**. Three weeks lead-time is preferred when making requests for data or reports. Requests that cannot be handled by her will be routed to others.